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United States General Accounting Office  
Washington, D.C. 20548

General Government Division

B-283620

September 29, 1999

The Honorable Constance A. Morella  
House of Representatives

Subject: Career Appointments of Political Appointees

Dear Ms. Morella:

This responds to your letter of August 18, 1999, requesting that we clarify when it is appropriate for a political appointee to receive a career position in the federal government. As you know, Congress has long been concerned about political appointees improperly obtaining permanent career positions in the government, and we have frequently reported on the issue. You noted in your letter that it is not appropriate for anyone to circumvent the government's merit system in order to obtain a career position; and you requested that we clarify when it is appropriate for a political appointee to receive a career position.

In brief, according to the applicable law and regulations, provided that proper merit system procedures are followed, it is permissible for a political appointee to receive a career appointment. In fact, regardless of whether or not a person is a current political appointee, political affiliations cannot be taken into account—either favorably or unfavorably—when a career appointment is made. In cases we have reviewed over several years, we have found relatively few problems with the selection of political appointees to career positions. However, diligent adherence to merit selection procedures remains vital to ensuring the integrity of any competitive selection process.

## BACKGROUND

The merit system is structured so that there is a clear distinction between political and career employees. Political employees are appointed without competition under Presidential, noncareer Senior Executive Service (SES), or Schedule C appointments. These appointments do not confer career status. Political appointees, therefore, serve at the pleasure of appointing officials and generally lack the protections and rights available to career employees. Career employees, on the other hand, compete under merit selection procedures. Their selection is determined on the basis of their relative knowledge, skills, and abilities after fair and open competition that is intended to ensure an equal opportunity for all

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candidates.<sup>1</sup> Successful candidates receive various types of career or career-conditional appointments that confer competitive status upon appointment to a position.

Political appointees are not prohibited from obtaining career or career-conditional appointments. In nearly all cases, a political appointee must compete with all other candidates for a position. However, there are a few instances where competition is not required. For example, a political appointee who has served at least 2 years in the immediate Office of the President or Vice President or on the White House staff may be noncompetitively appointed to a career position in an agency or department and acquire competitive status automatically upon appointment.<sup>2</sup> These types of appointments are rare.

Concerns can arise whenever a political appointee seeks a career appointment. Generally, these concerns are about whether the merit system principles will be followed when the appointment is made. These concerns may arise, for instance, because the political appointee competing for the career appointment is well-known or "connected" in the agency making the appointment. And in some cases, the political appointee may have worked for another political appointee in the chain of command who will be nominating the best-qualified candidate to the actual selecting official.

To determine when it is permissible to make career appointments of political appointees, we reviewed the applicable parts of the U. S. Code and the Code of Federal Regulations, as well as our past reports. The Office of Personnel Management (OPM) reviewed a draft of this letter. According to the Deputy Chief of Staff, OPM had no comments. We did our work in Washington, D.C., during August and September 1999 in accordance with generally accepted government auditing standards.

## WHEN CAREER APPOINTMENTS ARE PERMISSIBLE

According to the applicable law and regulations, provided that proper merit system procedures are followed, it is permissible for a political appointee to obtain a career position. Proper procedures include, but are not limited to, establishing an appropriate grade level and qualifications requirements for a position; properly advertising the vacancy; holding an appropriate examination of the applicants; correctly rating and ranking those applicants, including taking into account veterans' preference; and, finally, making a selection. These procedures are designed to provide fair and open competition that ensures equal employment opportunity for all applicants. In the large majority of cases we have reviewed over the years, we have found that agencies have followed appropriate procedures in making these types of career appointments.

However, in some instances, we have found problems. For example, in one case we found that an agency had failed to establish an adequate recruiting area for a vacant position. By limiting the area from which candidates would be recruited, the agency inappropriately

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<sup>1</sup> See 5 U.S.C. 2301(b)(1).

<sup>2</sup> See 5 C.F.R. 315.602.

limited the number and kinds of qualified applicants competing for the position, thus giving a current political appointee candidate an unfair advantage.<sup>3</sup>

Even when proper procedures are followed, the appearance of favoritism can exist. We have found appearances of favoritism several times in the selection of political appointees for career positions. For example, in a previous report, we reviewed the appointments of 36 former political appointees and legislative branch employees that occurred between January 1996 and March 1997. We found that although proper procedures had been followed, there were six cases that gave the appearance of favoritism. In two of those cases the vacancy announcements for the positions appeared to have been tailored to include specific work experiences possessed by the two political appointees who were eventually appointed to the career positions. The remaining four cases raised other questions, such as whether there was a bona fide need to fill the career position to which a former political appointee was appointed or whether a vacancy announcement was reissued after the closing of the original announcement to enable a former political appointee to apply.<sup>4</sup> Deviations from merit selection procedures and appearances of favoritism can undermine the integrity of the merit system and should, of course, be avoided.

Under the applicable law not only are political appointees allowed to obtain career appointments if all merit system procedures and processes are followed, but the law also explicitly prohibits taking political affiliations into account. The law states that "Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority discriminate for or against any employee or applicant for employment on the basis of . . . political affiliation."<sup>5</sup> Thus, whether or not an individual is a current political appointee, political affiliations cannot be considered when a career appointment is made.

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We will send copies of this report to Senator Fred Thompson, Chairman, and Senator Joseph Lieberman, Ranking Minority Member, Senate Governmental Affairs Committee; as well as Representative Dan Burton, Chairman, and Representative Henry Waxman, Ranking Minority Member, House Government Reform Committee. We will also send copies to the Chairmen and Ranking Minority Members of their Subcommittees, Senator Thad Cochran, Chairman, and Senator Daniel Akaka, Ranking Minority Member, Senate Subcommittee on International Security, Proliferation, and Federal Services; and Representative Joe Scarborough, Chairman, and Representative Elijah Cummings, Ranking Minority Member, House Subcommittee on Civil Service. We will make copies available to others on request.

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<sup>3</sup> PERSONNEL PRACTICES: Propriety of Career Appointments Granted Former Political Appointees (GAO/GGD-92-51, Feb. 12, 1992).

<sup>4</sup> PERSONNEL PRACTICES: Career Appointments of Former Political and Congressional Employees (GAO/GGD-97-165, Sept. 2, 1997).

<sup>5</sup> 5 U.S.C. 2302(b)(1)(E).

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I hope this responds to your question. If you have further questions or would like more information, please call me at (202) 512-8676. Major contributors to this letter were Richard Caradine and Michael J. O'Donnell.

Sincerely yours,

A handwritten signature in cursive script that reads "Michael Brostek".

Michael Brostek  
Associate Director, Federal Management  
and Workforce Issues



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